Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1976

No. 76- 76-1626

STEVEN WISE WRIGHT AND
CLARENCE EDWARD WRIGHT, JR.,
Petitioners,

v.

GEORGE BAILEY, SHERIFF OF
ALBEMARLE COUNTY, VIRGINIA,

AND

RAYMOND L. BELL,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in the above-entitled case on November 4, 1976.

OPINIONS BELOW

The opinion of the United States District Court for the Western District of Virginia, dismissing petitions for writs of habeas corpus is reported, *sub nom Wright* v. *Bailey,* 381 F.Supp. 924, and is set out in the Appendix, pp. 9-12.

The opinion of the United States Court of Appeals for the Fourth Circuit affirming the judgments of the district court is reported, *sub nom Wright* v. *Bailey,* 544 F.2d 737, and is set out in the Appendix, pp. 1-8.

The June 21, 1972 oral opinion of the Circuit Court of the County of Albemarle, in the State of Virginia, denying petitioners' motions to dismiss warrants is unreported and is set out in the Appendix, pp. 13-18. The order of the Supreme Court of Virginia denying a petition for a writ of error to the Circuit Court's June 22, 1972 orders of conviction, is unreported and is set out in the Appendix, p. 19.

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit is dated and was entered on November 4, 1976. The order of that court denying rehearing is dated December 22, 1976. By order of the Chief Justice of the United States dated March 24, 1977 the time for filing a petition for writ of certiorari was extended to and including May 21, 1977. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1) Where there is no applicable statute purporting to proscribe speech, can a conviction of disorderly conduct survive the test of due process when the evidence shows merely that, notwithstanding the twice repeated warning of the Sheriff's deputy that petitioner would be arrested for disorderly conduct if he would not "be quiet and let [the officer] find out what was going on", the petitioner again interrupted and contradicted his opponent's version of the disturbance in which they had been involved?

2) Where, as in Virginia, the unlawfulness of the arrest is a defense to a charge of resisting arrest, may the state refuse to recognize such defense when interposed by a black

man whose arrest was for failing to heed the officer's warning to be quiet and let the officer ascertain from a white participant in their recent altercation what had transpired?

3) Where, as in Virginia, one may protect a close relative from an unlawful assault, did the petitioner Clarence Wright have a right, protected by the due process clause of the fourteenth amendment, to repel with reasonable force an officer's striking his brother, the petitioner Steven Wright, with a billy club for the mere use of words, civilly spoken, when neither of the petitioners had made any show of force or threat or employed any threatening gesture against the officer or against any one else in the officer's presence?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the First and Fourteenth Amendments of the Constitution of the United States, which provide in pertinent part:

> First Amendment:
>
> Congress shall make no law . . abridging the freedom of speech . . . or the right of the people . . . to petition the government for a redress of grievances;
>
> Fourteenth Amendment:
>
> No State shall . . . deprive any person of life, liberty or property, without due process of law . . . .

This case also involves the following provisions of the Code of Virginia:

> § 18.1-253.2. *Disorderly conduct in other public places; power of counties, cities and towns to adopt ordinances and resolutions.*—If any person behaves in a riotous or disorderly manner in any street, highway, public building, or any other public place, other than those mentioned in the preceding section (§ 18.1-253.1), or causes any unnecessary disturbance in or on any public conveyance, by running through it, climbing

through windows or upon the seats, failing to move to another seat when lawfully requested to so move by the operator, or otherwise annoying passengers or employees therein, he shall be guilty of a misdemeanor.

Cities, towns and counties are hereby authorized and empowered to adopt ordinances or resolutions prohibiting and punishing the above acts, or any of them, when committed in such cities, towns, or counties, and such ordinances or resolutions shall provide the same punishment for a violation thereof as is provided by this section, anything in the charters of such cities or towns to the contrary notwithstanding. All fines imposed for the violation of such ordinances or resolutions shall be paid to and retained by such cities, towns and counties, and the Commonwealth shall not be chargeable with any costs in connection with any prosecution for the violation of any such ordinances or resolutions. (Code 1950, § 18-131; Code 1950 (Repl. Vol. 1960), § 18.1-254; 1950, p. 36; 1960, c. 358; 1969, Ex. Sess., c. 2.)

§ 18.1-310. *Obstructing justice by threats or force.*— If any person, by threats, or force, attempt to intimidate or impede a judge, justice, juror, witness, or an officer of a court, or any sergeant or other peace officer, or any revenue officer, in the discharge of his duty, or to obstruct or impede the administration of justice in any court, he shall be deemed to be guilty of a misdemeanor. (Code 1950, § 18-272; 1960, c. 358.)

STATEMENT OF THE CASE

On June 22, 1972, following a trial, without a jury, of several criminal warrants against the instant petitioners, the Circuit Court of the County of Albemarle, in the State of Virginia, convicted the petitioner Steven Wise Wright or disorderly conduct and imposed a fine of $50 and costs; and the court also convicted him of resisting arrest in violation of Section 18.1-310 of the Code of Virginia and sentenced him to jail for thirty days, the execution thereof being suspended for a period of twelve months.

At the same time the court convicted the petitioner Clarence Edward Wright, Jr., of assault and battery on a police officer and of resisting arrest in violation of Section 18.1-310 of the Code of Virginia; and on each conviction the court imposed a fine of $50 and costs and sentenced him to jail for thirty days, the two sentences to run consecutively (Code of Virginia, 1950, § 19.2-308).

The execution of these judgments was suspended and the petitioners were enlarged on bail, with the respondent Raymond L. Bell as surety, to allow a petition for writ of error to be filed in the Supreme Court of Virginia. Such petition was denied on February 2, 1973 and rehearing was denied on March 8, 1973. This Court, on October 9, 1973, denied a petition for a writ of certiorari to the affirmance of the judgment of conviction.

Separate petitions for writ of habeas corpus, filed in the United States District Court for the Western District of Virginia on January 25, 1974, were dismissed by that court's opinion and judgment of August 20, 1974. The United States Court of Appeals for the Fourth Circuit affirmed the judgment of the District Court on November 4, 1976 and denied rehearing *en banc* by order of December 22, 1976.

STATEMENT OF FACTS

The incident that gave rise to the arrest and subsequent convictions of the petitioners arose out of an altercation between them and the management of a nightclub or restaurant located in Albemarle County, Virginia. The altercation began inside the club and continued after the two petitioners and their two companions (all of whom are black) had been ejected by the manager and employees (all of whom are white). (Tr. 42, 57-60).[1] However, all

[1] Citations are to the Transcript of Testimony heard at the petitioners' trial in the state court, which transcript was exhibited with the petitions for habeas corpus.

violence had ceased when members of the sheriff's department of Albermarle County arrived on the scene and observed a group of persons variously estimated as between 15 and 30 standing in front of the club (Tr. 2-3, 12).

One of the officers, Deputy Sheriff Guthrie, upon leaving his car, recognized the manager of the club, Mr. Kessler, and went over to him and asked him what had occurred. As Kessler was attempting to give his side of the story, Steven Wright interrupted, stating that that was not what had happened (Tr. 3). Sheriff Guthrie testified that he accompanied his remarks with arm-waving and that he spoke loudly (Tr. 3-4).[3] The officer warned him that he would be arrested for disorderly conduct "if he didn't wait just a moment, be quiet and let [the officer] find out what was going on". (Tr. 3, 5).

Petitioner Steven Wright again interrupted and was warned again. On the third interruption Sheriff Guthrie told him that he was under arrest for disorderly conduct and caught him by the arm (Tr. 3-4) and started to the car and Wright jerked free. As the officer tried to catch his arm again, Wright jerked back (Tr. 5) and drew his right arm back past the height of his shoulder, his palm partially closed but not clinched into a fist (Tr. 13), all in one motion (Tr. 8). The officer then struck him on the side of his head with a "Boston" billyclub which was "a little longer and a little larger than the normal type billie". (Tr. 5, 10). "About the next second" (Tr. 5), Clarence Wright, Steven Wright's brother, jumped on the officer's back (Tr. 6). Two other officers subdued Clarence Wright and in the process one of them struck him on the back of the head with a nightstick. (Tr. 18, 22).

[3] The officer also testified that petitioner had "cursed." When he was unable to remember the words used, the court struck that testimony and did not consider it in finding Steven Wright guilty (Tr. 7).

THE BASIS FOR FEDERAL JURISDICTION IN THE COURT OF FIRST INSTANCE

The instant habeas corpus litigation was commenced by the filing of two separate petitions for writ of habeas corpus. Federal jurisdiction in the court of first instance was invoked under 28 U.S.C. 2241 (c) (3); the petitioners asserting that they are in custody in violation of rights to free speech guaranteed by the First and Fourteenth Amendments to the Constitution of the United States and in violation of the petitioners' right, secured by the Fourteenth Amendment, not to be deprived of their liberty without due process of law.

Remedies available in the courts of the state had been exhausted. At the close of the state's evidence in the June 22, 1972 criminal trial, counsel for petitioners moved to strike the evidence and to dismiss the charges. It was contended that the evidence failed to show any violation of the disorderly conduct statute and that, moreover:

> . . . [I]f the statute is so construed as to embrace any conduct that occurred prior to a physical touching between either of the officers and either of the defendants, that then the statute would be violative of the First and Fourteenth Amendments of the Constitution of the United States. (Tr. 25).

In argument, it was pointed out that the only basis shown for the initial arrest for disorderly conduct was speech that was protected by the First Amendment. Therefore, if the statute under which the disorderly conduct charge was brought was construed to cover such speech, then the statute would be void as being vague and overbroad, in violation of the First and Fourteenth Amendments (Tr. 28-29). It was further pointed out that the language of the statute itself was vague and therefore unconstitutional on its face, in violation of the Fourteenth Amendment (Tr. 28-29). In argu-

ment, counsel for petitioners cited decisions of this Court, including, *inter alia, Thompson* v. *City of Louisville,* 362 U.S. 199 (1960), and *Gooding* v. *Wilson,* 405 U.S. 518 (1972). It was further argued that because the other charges stemmed solely from the initial illegal arrest of petitioner Steven Wright, they also were in violation of the Fourteenth Amendment to the Constitution of the United States (Tr. 30). These arguments were rejected by the trial court (Tr. 34-39; A. pp. 14-18).

These same points were raised in the Assignments of Error filed with the Notices of Appeal to the Supreme Court of Virginia, and were briefed at length in the petition for writ of error. In denying the petition, the Supreme Court of Virginia stated:

> The petition . . . having been maturely considered and transcripts . . . seen and inspected, the court being of opinion that there is no reversible error in the judgments complained of, doth reject said petition and refuse said writ of error and supersedeas in each of these cases, the effect of which is to affirm the judgments of the said circuit court (A. p. 19)

The same contentions were made in the petition for rehearing, and by its denial of the petition the Supreme Court of Virginia necessarily again passed on and denied those same claims. (A. p. 20)

REASONS FOR GRANTING THE WRIT

I

The Immediate Cause For The Petitioners' Punishment, First By The Officers And Then By The Court, Was A Failure To Heed The Officer's Command To Be Quiet.

The *habeas* petition filed by Clarence Edward Wright, Jr., alleges, as one of the violations of Federal Constitutional Rights, that—

> "The altercation, in which the petitioner sought to aid his brother and for his participation in which he was arrested and convicted, was only the means by which the sheriff's deputy sought to punish the petitioner's and/or the petitioner's brother's exercise of rights of speech protected by the First and Fourteenth Amendments and to prevent the further exercise of such rights."

A similar allegation is made in the *habeas* petition filed by Steven Wise Wright. The alleged violation of federally protected liberty is made no less grievous by the selection of the criminal offense for which Steven Wright was prosecuted.

Under any view of the evidence, two young men were unlawfully battered by sheriff's deputies for one or both of two reasons: (a) one or both of the two men spoke when a deputy wanted them to be quiet and/or (b) the two young men are black and their adversaries (the manager and employees of the night club or restaurant and, in turn, the sheriff's deputies) are white.

After the officers' arrival and until Deputy Sheriff Guthrie made physical contact with Steven Wright, no criminal law had been violated; although the officer had shown disregard for the natural right to make spontaneous denial of accusations. The only justification suggested by the officer for seizing Steven Wright's arm is Wright's failure to be quiet as the officer had commanded. There is no indication that the failure to be quiet might have precipitated danger (c.f., *Terminiello* v. *Chicago,* 337 U.S. 1 (1949), *Feiner* v. *New York,* 340 U.S. 315 (1950)), unless the law holds that displeasing a peace officer is dangerous and rightly so. And there is nothing in the evidence that any thing spoken by either of the instant petitioners was within the category of "fighting"[3] words the use of which legislatures may make

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[3] *Gooding* v. *Wilson,* 405 U.S. 518, 528 (1972).

criminal, notwithstanding the strictures of the First Amendment.

For his mere use of words, according to the officer's testimony, Steven Wright was rudely seized; and he "jerked free". When the officer attempted again to seize his arm, Steven Wright pulled his arm away. Thereupon he was struck on the side of his head with the Boston billie wielded by Deputy Sheriff Guthrie. Steven Wright had committed no crime; he had made no threat or show of force, not even the symbolic threat of a clinched first. Even if he had given cause to be arrested, there were three officers present, either or all of whom could have effected the arrest without inflicting injury. Quite simply, Steven Wright was punished on the spot for his failure to "be quiet" as the sheriff's deputy had commanded.

Deputy Guthrie testified: "About the next second [after Steven Wright was struck with the Boston billie], his brother Clarence jumped me from behind" (Tr. 5). Immediately, Deputy Sheriff Carter grabbed Clarence Wright from the back, one hand on his shoulder and one in his hair, and was "shrugged off" (Tr. 18); whereupon Deputy Sheriff Hawkins struck Clarence Wright on the back of his head with an 18 inch night stick which broke from the force of the blow (Tr. 23). Thus, both of the petitioners were punished by the deputies for exercising rights which citizens have in the Commonwealth of Virginia.

II

THE PETITIONERS DID NOT VIOLATE ANY LAW

A. Disorderly Conduct

The disorderly conduct statute did not purport to forbid speech. Unless the "moment to moment opinions of a policeman on his beat"[4] are to be given legislative effect, the reach

[4] *Shuttlesworth* v. *Birmingham*, 382 U.S. 87, 90 (1965).

of the statute could not be extended by the officer's warning that he would read into the statute a proscription of speech which simply was not there. The officer's warning to Steven Wright was "that if he didn't wait just a moment, be quiet . . . I would arrest him for disorderly conduct". The officer's testimony was that "he was loud, boisterous and waving his arms * * * [and that there] was some stepping forward and backward". Such testimony does not show that the petitioner did *behave* "in a a riotous or disorderly manner" (Code of Virginia § 18.1-253.2) or in a manner which "tends to a breach of the peace" (*Collins* v. *City of Norfolk*, 186 Va. 1, 5, 41 S.E.2d 448 (1947)) or in such a manner as "to corrupt the public morals or to outrage the sense of public decency" (*Hackney* v. *Commonwealth*, 186 Va. 888, 890, 45 S.E.2d 241 (1947)).

The trial court found that Steven Wright interfered with the police investigation by interrupting the conversation between the deputy sheriff and the restaurant manager and concluded that such conduct was disorderly (Tr. 34-35). However, the legislature had indicated that interference with a peace officer in the discharge of his duty would be criminal if (and only if) such were done "by threats, or force" (Code of Virginia, § 18.1-310, *supra.*).

B. Resisting Arrest

It is clearly the law of Virginia that an arrest without lawful cause is but an unlawful assault which the citizen has a right to resist with reasonable force. *Muscoe* v. *Commonwealth*, 86 Va. 443, 10 S.E. 534 (1890); *Banks* v. *Bradley*, 192 Va. 598, 66 S.E.2d 526 (1951). More recently, the point was clearly illustrated, viz:

> "If the officer [assigned to the 'shoplifting detail'] attempted to arrest Broaddus for failure to show his identification, or because plaintiff and his companions laughed at him, or because the officer thought that

plaintiff was 'passing signals', or for a combination of these reasons, it was an unlawful arrest and plaintiff could resist with such reasonable force as was necessary to repel that being exercised by the officer in his unwarranted undertaking." *Broaddus* v. *Standard Drug Co.*, 211 Va. 645, 652, 179 S.E.2d 497 (1971).

C. Assault and Battery

It is equally clear, under the law of Virginia, that Clarence Wright, Jr., had a lawful right to repel with reasonable force the unlawful assault upon his brother Steven. *Mitchell* v. *Commonwealth,* 140 Va. 572, 580-1, 125 S.E. 311 (1924), *United States* v. *Moore,* 332 F.Supp. 919 (E.D. Va. 1971). And it necessarily follows that he had a lawful right to resist with reasonable force his alleged arrest for so doing. *Muscoe* v. *Commonwealth, supra, Banks* v. *Bradley, supra.*

III

THE COURTS BELOW IMPROPERLY AVOIDED THE FIRST AMENDMENT QUESTION WHICH IS CRUCIAL TO PETITIONERS' LIBERTY

Conceivably, the convictions for "resisting arrest" might be struck down for the reason that there is no evidence that either of the petitioners violated Section 18.1-310 of the Code of Virginia by employing *threats* or *force* against the officer who was effecting *his* arrest. In this connection, Steven had merely "jerked free" his arm from the deputy's grasp and pulled back his arm to keep from being seized again; and then he was struck with the Boston billie. Clarence had merely "shrugged" (his shoulders) when Deputy Carter grabbed him from the back with one hand on his shoulder and the other pulling his hair; and then Deputy Hawkins hit Clarence on the back of the head with the night stick. "[I]t is a violation of due process to convict and punish a man without evidence of his guilt" (*Thompson* v. *City of Louisville, supra* 362 U.S. at 206.

Nevertheless, there would remain the conviction of Clarence Edward Wright, Jr., for assault and battery on a police officer [Deputy Sheriff Guthrie], unless Guthrie's command that Steven Wright "be quiet" and his attempt to enforce that command by arrest and/or by violence were constitutionally impermissible. If Steven Wright's speech was within the protection of the First Amendment, then Guthrie's attack was an unlawful assault upon Steven Wright which his brother, the petitioner Clarence Edward Wright, Jr., had a right to repel with reasonable force.

The District Court avoided the First Amendment question by isolating the conviction of disorderly conduct (for which no jail sentence was imposed) from the conviction of assault and battery and the two convictions of resisting arrest; and then the court considered the last three convictions as it would have if the underlying events had occurred at some time and place entirely different from the alleged disorderly conduct.

The Court of Appeals avoided the question by turning to the petitioners' disadvantage the circumstance that over six months after they filed their habeas corpus petitions, the district court struck down the disorderly conduct statute for facial unconstitutionality. *Squire* v. *Pace,* 380 F.Supp. 269 (W.D. Va. 1974), aff'd 516 F.2d 240 (4th Cir. 1975). cert. denied 423 U.S. 840 (1975). The opinion of the Court of Appeals in the instant case holds that "[t]he petitioners' argument that Steven's arrest was unlawful depends entirely on the unconstitutionality of the Virginia disorderly conduct statute". Only in footnote 6 of the opinion does the Court of Appeals take notice of the petitioner's assertion that the arrest of Steven Wright violated his First Amendment rights; and in that footnote the contention of the petitioners was answered by a suggestion that a policeman on his beat has the power to punish summarily for contempt as does a court in session, viz:

> "No one has a right under the First Amendment by repeated interruptions to interfere with court proceedings. Similarly, no one has a right to make difficult or impossible an orderly investigation by a police officer of a complaint registered with him."

In the Petition For Rehearing *En Banc*, it was argued that the manager of the night club was so engaged in continuing his assault against the petitioners that he had no opportunity to summon the police and that the whole evidence tends to show that the petitioner Clarence Wright made or attempted to make complaint to Deputy Sheriff Guthrie immediately upon his arrival. The officer was not acting in "a perfectly fair and impartial manner" as footnote 6 of the opinion below suggests. He ignored Clarence Wright's protest that they had been unlawfully assaulted by the restaurant personnel and arbitrarily chose to elicit his "facts" from the restaurant manager. The officers and the restaurant personnel are white persons and the petitioners are not.[5]

The General Assembly of Virginia in 1970 had seen fit to extend to local governing bodies and agencies a measure of protection (which is inherent with courts and legislatures) against the willful interruption of their deliberations. (Code of Virginia § 18.1-253.3). But nowhere outside of footnote 6 of the opinion below do we find authority for a police officer's commanding silence, absent "clear and present danger". The conclusion of the Court of Appeals cannot be squared with *Thompson* v. *City of Louisville, supra*, where this Court said:

> "We assume, for we are justified in assuming, that merely 'arguing' with a policeman is not, because it could not be, 'disorderly conduct' as a matter of the substantive law of Kentucky." (362 U.S. at 206).

[5] Tr. 42; Petitions for Writ of Habeas Corpus, Section IV, Statement of Facts.

The opinion below suggests judicial ratification of a notion that police officers are free from the restrictions which the First Amendment places on all governments in this Nation and on each and every agency thereof.

> "Instinct with its ever-present potential for arbitrarily supporting First Amendment liberties, that kind of law bears the hallmark of a police state." *Shuttlesworth* v. *City of Birmingham*, 382 U.S. 87, 91 (1965).

Absent clear and present danger, may the "breathing space",[6] which First Amendment freedoms need for their survival, be curtailed to *create* justification of an arrest for their exercise? If so, citizens should be informed that their most precious liberty is illusory. If not, then policemen need to know that the First Amendment is a limitation on their powers, at least as much as it limits the power of legislatures.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted and the decision of the court below reversed.

Respectfully submitted,

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[6] *National Asso. for Advancement of Colored People* v. *Button*, 371 U.S. 415, 434 (1963).

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United States Court of Appeals
FOR THE FOURTH CIRCUIT

No. 74-2105

STEVEN WISE WRIGHT AND
CLARENCE EDWARD WRIGHT, JR.,
Appellants,

v.

GEORGE BAILEY AND RAYMOND L. BELL,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE WESTERN DISTRICT OF VIRGINIA,
AT CHARLOTTESVILLE
TED DALTON, DISTRICT JUDGE

Argued: May 7, 1976. Decided: November 4, 1976.

Before RUSSELL, Circuit Judge, and FIELD, Senior Circuit Judge, and WIDENER, Circuit Judge.

S. W. Tucker (Hill, Tucker & Marsh; Jack Greenberg, Charles Stephen Ralson, on brief) for Appellants; Andrew P. Miller, Attorney General of Virginia, and Gilbert W. Haith, Assistant Attorney General, for Appellees.

RUSSELL, CIRCUIT JUDGE:

The petitioners Steven Wright and Clarence Wright, in separate petitions, sought in the District Court *habeas* relief in connection with their convictions in the Circuit Court of Albemarle County, Virginia, as a result of a disturbance

or altercation at a night club in such County. Since the offenses of which both petitioners were charged in the State Court proceedings arose out of the same circumstances, the two petitioners were tried together in the State Court and their *habeas* petitions in the District Court were combined for hearing. The District Court denied relief in both cases. The petitioners have appealed. We affirm.

The petitioners who are brothers were at a night club. A disturbance in which they were involved arose and the manager of the night club called the police authorities. When they arrived at the scene, the officers inquired of the manager, who had made the complaint, the circumstances of the complaint. According to the prosecution testimony, the petitioner Steven Wright, shouting in a loud and boisterous voice, kept interrupting the manager in his account of the disturbance, belligerently contradicting the manager's statement and making it difficult, if not impossible, for the officer to proceed with his investigation of the complaint of the manager of the night club. The officer who was conducting the investigation asked Steven to remain quiet until after he had gotten the manager's statement. Steven seemed to pay no heed to the request, though it was repeated by the officer. At this point, the officer told Steven he would arrest him if he continued to interrupt his interrogation of the manager. When Steven continued to interrupt and to interfere with the examination, the officer arrested him for disorderly conduct, took him by the arm and attempted to lead him to the police car. At this point Steven "jerked free" and drew back as if, according to the officer, to strike the officer. When he did this, the officer struck him with his billy, whereupon the petitioner Clarence Wright jumped on the officer "from behind," inflicting "a deep cut around [his] neck." Other officers pulled Clarence Wright off the back of the investigating officer and arrested him for an assault upon an officer. After a trial in the State Court,

jury waived, the petitioner Steven Wright was found guilty of disorderly conduct and unlawfully resisting arrest, and the petitioner Clarence Wright was found guilty of assault and battery on a police officer and of unlawfully resisting arrest. On the charge of disorderly conduct the petitioner was ordered to pay a fine of $50 and on the other charge, was fined $50 and sentenced to 30 days' confinement, suspended and placed on probation for a year. The petitioner Clarence Wright was sentenced for assault and battery on a police officer to serve 30 days in jail and pay a fine of $50, and for unlawfully resisting arrest he was sentenced to serve 30 days in jail and a fine of $50. The petitioners applied for a writ of error to the State Supreme Court but such application was denied as was their petition for writ of certiorari to the Supreme Court of the United States.[1] These *habeas* proceedings were then begun.

The District Court dismissed the claim of Steven Wright which related to his conviction for disorderly conduct, resulting in a fine, on the ground that the petitioner was not "in custody" within the intendment of *habeas* jurisdiction, since the sole punishment imposed for such conviction was a fine with no provision for incarceration in event of nonpayment. Such ruling is amply supported by the authorities[2] and we affirm. The Court, however, found that there was *habeas* jurisdiction to review Steven Wright's conviction of resisting arrest and Clarence Wright's conviction of assault and battery upon an officer and of resisting arrest. The claim for relief in both cases turns on the petitioners' contention that Steven's arrest was unlawful. If it were un-

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[1] 414 U.S. 828 (1973).

[2] *Edmunds* v. *Won Bae Chang* (9th Cir. 1975) 509 F.2d 39, 40-1, *cert. denied* ..... U.S. .....; *United States Ex Rel. Dessus* v. *Commonwealth of Pa.* (3d Cir. 1971) 452 F.2d 557, 559-61; *Westberry* v. *Keith* (5th Cir. 1970) 434 F.2d 623, 624; *Furey* v. *Hyland* (D.C. N.J. 1975) 395 F. Supp. 1356, 1358-63; *Pueschel* v. *Leuba* (D.C. Conn. 1974) 383 F. Supp. 576, 579-80.

lawful, the petitioners reason, Steven Wright had a right forcibly to resist arrest and, when the arresting officer sought to arrest forcibly Steven, his brother Clarence had a right to go to his assistance. It follows that, unless it is established that Steven's arrest *when made* was unlawful, the claim for relief by both petitioners must fail.

The petitioners' argument that Steven's arrest was unlawful depends entirely on the unconstitutionality of the Virginia disorderly conduct statute. It is conceded, though, that such statute had not been held unconstitutional prior to Steven's arrest. It was more than two years later that in a proceeding in the District Court, affirmed almost a year later by this Court, that the statute was found constitutionally defective.[3] So far as the arresting officer knew at the time—or for that matter, the petitioners themselves knew—the statute was valid and was not under constitutional attack. An arrest is not unlawful within the common law right to resist,[4] if the arrest is authorized by statute or by legal process facially good, even though the statute may later be declared unconstitutional, or the legal process found defective. *United States* v. *Beyer* (2nd Cir. 1970) 426 F. 2d 773, 774; *State* v. *Briggs* (Mo. 1968) 435 S. W. 2d 361, 364-5; *Canney* v. *State of Florida* (Fla. Ct. App. 1974) 298 So. 2d 495, 496, *cert. denied* 310 So. 2d 743, *cert. denied*

[3] The decision in *Squire* v. *Pace* (W.D.Va. 1974) 380 F. Supp. 269, *aff'd.* 516 F. 2d 240, *cert. denied* 423 U.S. 840 (1975), was handed down in August, 1974. The trial of the petitioners occurred in June, 1972.

[4] Generally, the justification for this common law right has disappeared and both courts and legal scholars find no warrant for its continued vitality. Both by statute and by decision, it has been abandoned in an increased number of jurisdictions. The Uniform Arrest Act expressly denies the right and the American Law Institute in its Restatement gives no recognition to the right. The modern trend in decisions, statutes and scholarly comments, is indicated in *United States* v. *Ferrone* (3d Cir. 1971) 438 F. 2d 381, 390, *cert. denied* 402 U.S. 1008. Virginia does not appear, however, to have abandoned the rule either by statute or decision.

423 U. S. 892 (1975); Note, *Defiance of Unlawful Authority,* 83 *Harv. L. Rev.* 626, 636; *cf., also, United States* v. *Ferrone, supra,* 438 F. 2d at 390; *Commonwealth* v. *Supertzi* (Pa. 1975) 340 A. 2d 574, 575; *State* v. *Wright* (1968) 1 N. C. App. 479, 162 S. E. 2d 56, 62.[5] This exception to the common law rule was stated in the Note in 83 *Harv. L. Rev.* at 636 thus:

> "* * * The only major restrictions on this common law right, [to resist an unlawful arrest] beyond those already applied to the analogous right of self-defense, were holdings that arrests were valid—and resistance to them therefore unlawful—*if authorized either by a law later declared unconstitutional* or by an arrest warrant found sufficient on its face to show its purpose although suffering from some latent defect." (Emphasis added)

The reasoning on which this exception rests is that the validity of the arrest depends on the law *as it exists at the time of the arrest and not as it may later be declared.* This was the rationale of the decision in *United States* v. *Beyer, supra,* where the Court said:

> "Appellant argues that three Supreme Court decisions which postdate the issuance of the indictment against him invalidated its use as the basis for lawful process and therefore entitled him to resist arrest. This contention is without merit. The indictment was 'fair on its face.' (Ex Parte United States, 287 U. S. 241, 249, 53 S. Ct. 129, 77 L. Ed. 283 (1932) *when issued* * * *." (Italics added)

Somewhat similar reasoning was expressed in *Canney* v. *State of Florida, supra:*

> "Irrespective of the constitutionality of the city ordinances which appellant now collaterally attacks, the lawfulness of the arrest *** must stand or fall upon the

[5] This point was noted in *Franklin* v. *United States* (1903) 218 U.S. 161, 171, but the Court did "not find it necessary to decide" it.

facts and circumstances *then existing.*" (Court's emphasis)[6]

Perhaps the most complete explication of the exception appears in *State* v. *Briggs, supra,* at 364-5:

> "* * * It also contends that even if the ordinance is unconstitutional, the defendant had no right to resist arrest * * *. We are of the opinion that this third contention of the State must be sustained and hence we need not consider the constitutionality of the ordinance.

[6] In addressing a public meeting held to protest our involvement in the Vietnam war, the defendant in this case had used the phrases, "* * * bring the Goddamned war home" and "the Goddamn pigs." When he finished speaking, an officer approached him and said, "[y]ou are under arrest for disorderly conduct, profane language." The defendant thereupon resisted arrest. He was prosecuted for forcibly "Resisting an Officer with Violence." At trial, the defendant contended he had a right to resist, since his arrest was under a statute violative of First Amendment rights, titled "Obscene Language." Since the statute had not been held unconstitutional at the time of the defendant's arrest, such arrest was not, in the opinion of the Court, unlawful within the contemplation of the rule as to right to resist arrest.

In these cases, the petitioners also assert in their brief that Steven was exercising his First Amendment rights and that his arrest under the disorderly conduct statute violated his First Amendment rights. The District Court, however, found that, unlike the situation in the Florida case, such claim was plainly specious, and we agree. Steven was not engaged in publicizing a protest against national policy, as was the defendant in *Canney;* he was engaged in an argument with a police officer. The investigating officer was seeking to make an investigation of a complaint made to him by the manager of a night club. Steven, even as the statement in his brief concedes, was preventing the officer from making that investigation by his repeated loud interruptions. Free speech is not absolute; its propriety depends on the time when, and place where, it is exercised. *Adderley* v. *Florida* (1966) 385 U.S. 39, 48, n. 7. No one has a right under the First Amendment by repeated interruptions to interfere with court proceedings. Similarly, no one has a right to make difficult or impossible an orderly investigation by a police officer of a complaint registered with him. There is no suggestion by the petitioners that the officer, in conducting the investigation, was not acting in a perfectly fair and impartial manner. It was but natural that he should first address his inquiry to the complainant. The First Amendment cannot be used as a shield by the petitioners to permit them to make an orderly police investigation of a legitimate complaint impossible.

> "The City of Riverside had adopted in 1956 the ordinance making drunkenness an offense. So far as the record here discloses the constitutionality of the ordinance had never been attacked. Under such circumstances, it would not have been proper for a police officer of the city to take it upon himself to pass upon the validity of the ordinance. Until repealed or held invalid by a court of competent jurisdiction, it was the duty of the officer to enforce the ordinance. Likewise, it was not the right of an individual to resist arrest on the basis of a contention that the law he allegedly was violating was unconstitutional or invalid for some other reason. A defendant may raise that question as a defense to the charge and have the validity or constitutionality of the statute or ordinance determined, and he will be acquitted if his claim of unconstitutionality or invalidity is sustained. Courts are established and available for the purpose of determining such questions. Such procedure is an integral part of an orderly society under a government of law. To permit persons to resist arrest and attack an officer and then be excused if they successfully question the constitutionality or validity of a statute or ordinance would lead to chaos and would be intolerable. This being true, when one resists arrest, as here, and strikes and wounds the officer, he is subject to criminal prosecution for violation of the statute which prohibits such attack on an officer engaged in the performance of the duties of his office. This is true even if the ordinance is determined subsequently to be unconstitutional."[7]

Since it was not until long after Steven's arrest that the statute under which he was arrested was found unconstitu-

[7] This reasoning is largely an echo of Judge Learned Hand's cogent observation, as reported in the 1958 Proceedings, American Law Institute, at p. 254:

> "The idea that you may resist peaceful arrest * * * because you are in debate about whether it is lawful or not, instead of going to the authorities which can determine * * * [is] not a blow for liberty but on the contrary, a blow for attempted anarchy."

tional, it follows that his arrest was not unlawful at the time made within the contemplation of the rule granting one arrested the right to resist. Under those circumstances both petitioners are without any basis to challenge on constitutional grounds the convictions of resisting arrest in the petitioner Steven Wright's case or of assault and resisting arrest in the case of the petitioner Clarence Wright.

The judgments of the District Court dismissing the petitions herein are accordingly

Affirmed.

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 74-2105

STEVEN WISE WRIGHT, et al.,
Appellants,

vs.

GEORGE BAILEY, et al.,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA.

ORDER DENYING REHEARING

Filed December 22, 1976

Upon consideration of the petition for rehearing and of the petition for rehearing *en banc;*

Now, therefore, with the concurrence and approval of the other members of the panel and in the absence of a request for a poll of the entire court, as provided by Appellate Rule 35(b),

It is ADJUDGED and ORDERED that the petition for rehearing is denied.

Donald Russell
United States Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

August 15, 1974

Civil Action Number 74-C-2-C

STEVEN WISE WRIGHT,

Petitioner,

vs.

GEORGE BAILEY AND RAYMOND L. BELL,

Respondents,

Civil Action Number 74-C-3-C

CLARENCE EDWARD WRIGHT, JR.,

Petitioner,

vs.

GEORGE BAILEY AND RAYMOND L. BELL,

Respondents.

OPINION AND JUDGMENT

Petitioner Steven Wright was convicted in the Circuit Court of the County of Albemarle, Virginia, of disorderly conduct and resisting arrest. His brother, petitioner Clarence Wright, was contemporaneously convicted of assault and battery and resisting arrest. Herein, they petition this court for federal habeas corpus relief pursuant to 28 U.S.C. § 2254, alleging that their convictions are constitutionally invalid. Since their convictions arise out of the same incident and involve the same defendants, the petitions have been consolidated for disposition.

Petitioner Steven Wright contends that his convictions should be vacated because: 1) Virginia's disorderly conduct

statute (§ 18.1-253.2) is facially invalid and was unconstitutionally applied to him in violation of the First and Fourteenth Amendments; 2) the evidence was insufficient to sustain a conviction for disorderly conduct; 3) the conviction for disorderly conduct violates the due process clause of the Fourteenth Amendment because there was no evidence to support petitioner's guilt; and 4) the altercation which resulted in petitioner's arrest and conviction for resisting arrest was the means by which petitioner was denied rights of speech protected by the First and Fourteenth Amendments.

The court does not reach the merits of petitioner's first three contentions because of a jurisdiction obstacle which prevents consideration. This court's habeas corpus jurisdiction is limited to consideration of applications for writs of habeas corpus filed "in behalf of person[s] *in custody* pursuant to the judgment of a state court . . ." 28 U.S.C. § 2254(a) (emphasis supplied). Petitioner was ordered to pay a fine of $50 and costs and, therefore, was not "in custody" pursuant to the conviction for disorderly conduct. Consequently, the court does not have the statutory authority to rule on his contentions.[1]

Pursuant to his conviction for resisting arrest, Steven Wright was sentenced to thirty days imprisonment, the execution thereof being suspended for a period of twelve months, and therefore is "in custody" within the meaning of § 2254(a). *Walker* v. *Dillard*, No. 73-1108 (4th Cir., June 20, 1973) (mem. dec.). Upon consideration of the merits of his contention regarding his resisting arrest conviction, however, the court finds no violation of petitioner's right of free speech since he was not engaging in protected

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[1] Were the court to reach the merits of petitioner's contentions, it would adhere to the opinion recently enunciated by Chief Judge James Turk, and declare Virginia's disorderly conduct statute facially invalid. *Squire* v. *Pace*, No. 74-27 (W.D. Va., Aug. 9, 1974).

activity at the time of arrest. The arresting officer testified at trial that when he placed petitioner under arrest for disorderly conduct he caught him by the arm and started to his police car when petitioner jerked free. "As he jerked free," the officer related, "I tried to catch his arm again and this is when he drew back . . . I struck him with a billie—the thing I had at the time." Certainly, petitioner's action in twice jerking his arm free of the grasp of a police officer attempting to effect an arrest does not constitute speech or symbolic speech and, therefore, the arrest did not infringe his First and Fourteenth Amendment rights.[2]

Petitioner Clarence Wright contests the validity of his convictions asserting that they are invalid because: 1) the altercation in which he sought to aid his brother and for his participation in which he was arrested and convicted of assault and battery and resisting arrest, was the means by which he was denied rights of speech protected by the First and Fourteenth Amendments; 2) his convictions depend upon the conviction of his brother for alleged violation of Virginia's disorderly conduct statute which on its face and as applied is unconstitutionally vague and overbroad; 3) his

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[2] An additional contention which petitioners assert in their memorandum supporting their petitions for habeas corpus, but not in the petitions themselves, is that Steven Wright, as the subject of an illegal arrest, and Clarence Wright, as a person in close relationship of consanguinity, could resist by reasonable force the illegal arrest pursuant to an unconstitutional statute effected upon Steven. The Supreme Court of Virginia would not have considered this contention since it upheld the disorderly conduct statute thereby foreclosing any consideration of what force might be used to resist an illegal arrest. Likewise, this court is unable to reach this contention because it is prevented, on jurisdictional grounds, from ruling on the constitutionality of the disorderly conduct conviction. The only context in which the court might consider this contention is pursuant to a determination as to whether Steven Wright's resisting arrest conviction and Clarence Wright's assault and battery and resisting arrest convictions were supported by any evidence so as to conform with due process requirements. *Grundler* v. *State of North Carolina*, 283 F.2d 798 (4th Cir. 1960). Neither petitioner, however, proffers this issue.

convictions depend upon the conviction of his brother for disorderly conduct and the evidence was insufficient to establish his brother's guilt; and 4) his convictions depend upon the conviction of his brother for disorderly conduct and there being no evidence which would support a conviction for disorderly conduct, all of the convictions violate the due process clause of the Fourteenth Amendment.

Petitioner Clarence Wright's arrest for assault and battery and resisting arrest occurred immediately after Steven Wright's arrest. Clarence witnessed his brother's arrest for disorderly conduct and subsequent action in twice jerking free from the grasp of the arresting officer. Thereupon his brother was "billied" by the arresting officer and Clarence jumped the officer from behind placing his hands around the officer's neck thereby precipitating a deep cut in the officer's neck when he twisted free.

As with Steven, it is obvious that Clarence Wright's conduct was not protected speech or symbolic speech and consequently the arrests did not violate his constitutional rights. Nor does the court find any merit in his contentions that his convictions must be invalidated because they derive from the allegedly unconstitutional arrest of his brother for disorderly conduct. The court did not determine the constitutionality of the statute and, in any case, Clarence Wright lacks standing to assert the invasion of his brother's constitutional rights. *See, e.g., United States* v. *Manarite*, 314 F.Supp. 607 (S.D. N.Y. 1970).

For the aforementioned reasons, these petitions are hereby ordered dismissed.

The clerk is directed to send a certified copy of this opinion and judgment to the petitioners and to counsel of record.

ENTER:

TED DALTON
United States District Judge
August 15, 1974

VIRGINIA:

IN THE CIRCUIT COURT OF
THE COUNTY OF ALBEMARLE

June 22, 1972

Appeal from County Court
#2419, #2414

COMMONWEALTH OF VIRGINIA

vs.

STEPHEN WISE WRIGHT,

Defendant,

AND

Appeal from County Court
#2417, #2415

COMMONWEALTH OF VIRGINIA

vs.

CLARENCE EDWARD WRIGHT, JR.,

Defendant.

Appearances:

Mr. Charles R. Haugh
Commonwealth's Attorney

Mr. S. W. Tucker
Attorney for defendants

ORAL OPINION OF HONORABLE DAVID F. BERRY, JUDGE, OVERRULING MOTIONS TO STRIKE

OPINION OF CIRCUIT COURT OF THE COUNTY OF ALBEMARLE

Court: Now I'm referring to case number 2419 which is the charge of disorderly conduct against Stephen Wise Wright. Now in response to the motion to strike, the court does take into account the information that was contained in the case Mr. Tucker has cited. The Court is familiar with the Georgia case as far as cursing and abusing, words calculated to provoke the breach of the peace. But as you will recall in this case, there was no charge that this man cursed anyone which constituted the disorderly conduct or that he used insulting words. His conduct was such in a public place in which there were 30 or more people apparently milling around outside according to the testimony of the officers when they arrived in three separate police cars. Then the Chief Investigating Officer at that time was undertaking to make his investigation and his testimony and that of at least one other officer was that Stephen Wright when he was asked not to interfere did in fact step back the first time and—after being asked by the officer. He interrupted the second time by—not only by his loud voice but the gestures and position in which he placed himself the second and third times. Now I don't find that his conduct consisted of—his disorderly conduct was based on cursing because the officer said—he said in effect that he cursed but that evidence is not substantially before the court in the language that would constitute cursing. The conduct that is before the court is what he actually did by the loudness of his voice and the manner in which he placed himself as far as the relative position of the officer and the owner or the person who apparently was in charge of the establishment and who had made a complaint to the officer. At least when the officer arrived he went to the man that he, himself, knew to be connected with the operation of the establishment which is a public dance hall or public place

of recreation and amusement. Finding himself in that position it seems to me that the conduct that the defendant Stephen Wise Wright engaged in was disorderly. The motion to strike the evidence on that charge is overruled. Likewise the charge against Stephen Wise Wright which is resisting arrest in violation of Section 18.1-310 of the Code seems to have been made out. It leaves the officer in a position where he's either got to assert his authority physically or use the power of arrest. Now I realize from what Mr. Tucker says that a man does not commit a crime by words, by mere words alone, they must be coupled with something else. When an officer is investigating a disturbance at a public place and then reacts to this situation the way he did, it seems to me that he was reasonable in undertaking to place Mr. Wright under arrest rather than knocking him aside because the alternative would be to have his investigation interferred with. I don't know exactly where that would lead officers in positions of investigating a disturbance at a public place, if he had to put up with this. You're getting awfully close to self-help when you deny any officer the opportunity to arrest on the combination of conduct and words which under other circumstances would be less threatening to public order. Therefore the motion as to Stephen Wise Wright on the resisting arrest is overruled. Mr. Tucker if you want to do—review all of these, you may make your exceptions at the conclusion of all these, if you'd like to. Now on the case of Clarence Edward Wright, I don't find the evidence that would justify finding Clarence Edward Wright guilty of disorderly conduct at the time his brother, Stephen Wise Wright, was arrested. If his conduct was disorderly it would be merged in the offense of committing assault and battery on a police officer. To that extent the evidence seems to be insufficient to maintain the charge against Clarence Edward Wright Jr., as to the charge of disorderly conduct in a public place which is

warrant—or case number 2416. The motion is sustained as to that charge against Clarence Edward Wright Jr. Now I don't think there can be any argument over the fact that Clarence Edward Wright Jr. jumped on Officer Guthrie from behind, and he was pulled off by another officer and subdued by force and I recognize of course that he may not have been fully aware at that particular moment that he himself was being placed under arrest. But, even so, he was fully aware that he was assaulting a police officer in uniform and the indications are that these other officers were standing by. On that basis that—the fact that he may have been slow to realize that he, himself, was under arrest would seem to be no excuse and the motion to strike as to the two cases 2417 and 2445, that is resisting arrest 2445, and committing an assault on an officer with his hands and fist 2417, both motions are overruled. Now Mr. Tucker I assume you wish to note exceptions—and objections to all those . . .

Tucker: I am not sure that such is necessary right now under the statute but I do note exceptions to the rulings insofar as the court has denied the motion to strike and would like to make clear another ground—I think it has been argued but I want to—and that is if the disorderly conduct statute is construed to embrace the conduct as has been shown here in the evidence, then purely the disorderly conduct statute is too vague to withstand the requirements of specificity of the due process called for in the 14th Amendment of the Constitution of the United States. A statute is required to be drawn so that a person can know from the statute what is proscribed and I submit that the statute here, Section 18.1-253.2 has nothing in it that puts a person on notice that his protestation or even what's been described as stepping forward and stepping back is a violation of law. I think the statute does not give warning that this kind of conduct is prohibited so I just submit that as an

additional due process ground in addition to the 1st Amendment position which we previously argued.

Court: Yes sir, I understand that—noted that in your argument before, the statute must be specific in what it undertakes to regulate. Mr. Tucker I suppose we are all limited in our ability to draw statutes which would have clear meaning to everyone. It seems to be an increasingly difficult art these days. On the other hand if we followed this argument to the extent that you have proposed, it leaves a police officer in a position where he has got to try a case before he decides to arrest . . .

Tucker: Isn't that a matter sir for the legislature to correct and not the courts?

Court: I don't think the legislature can go but so far in the use of language which in the past has had a clear meaning but in view of decisions which have gradually narrowed and confined in the application of certain words, we've even gotten to the point now where nobody knows what a curse word is anymore according to the Supreme Court. Now if you take that to the logical conclusion the court would say when using four letter words which are now the art in the theater and certain entertainment circles, wouldn't justify making arrests so the outraged person is left to his own protection and if he chooses to push the teeth of the other person who is using the words down his throat, that's his only recourse and this leaves the whole thing to be decided at almost the self help level which the police officer is designed to protect the public from having to result to. In other words if the police officer had no grounds for doing what he did, Mr. Kessler, the owner of the establishment would be left to his own devices. What you're saying in effect is that the officer shouldn't have arrested anybody—he should have gone on and left the place in an uproar. We can't hold the officers to a standard which actually goes to the point of defining words past the point of being understandable to the general public and the word "disorderly" in my opinion carries enough of the common usage and knowledge with it that an officer has got to act on some basis on his own descretion. If you say that this man had no right to place the defendant under arrest, therefore the defendant having not been arrested, was not resisting arrest doesn't leave any meaning in the law at all. If the Supreme Court wants to indicate that and put the General Assembly back to redefining what public disorder is, resisting arrest and everything else combined, I suppose they will just have to do it. I don't think we can abandon that at this stage of the trial court but I realize that there have been inroads made on it. The motions are denied on the grounds indicated and an officer seems to me, whether his conviction would have stood up or not, does not appear that he acted outside any unlawful means himself in making this arrest and the defendants in undertaking to resist him, far exceeded what their conduct should have been as far as what was disclosed by the evidence the Commonwealth has presented.

ORDER OF THE SUPREME COURT OF VIRGINIA DATED FEBRUARY 2, 1973, DENYING PETITION FOR WRIT OF ERROR

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 2nd day of February, 1973.

The petition of Clarence Edward Wright, Jr., and Steven Wise Wright for writs of error and supersedeas to judgments rendered by the Circuit Court of Albemarle County on the 22nd day of June, 1972, in prosecutions by the Commonwealth against the said petitioners (Indictment Nos. 2414, 2416, 2417, and 2419), having been maturely considered and transcripts of the records of the judgments aforesaid seen and inspected, the court being of opinion that there is no reversible error in the judgments complained of, doth reject said petition and refuse said writ of error and supersedeas in each of these cases, the effect of which is to affirm the judgments of the said circut court.

A Copy,

Teste:

Howard G. Turner, Clerk